



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/168895

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on October 13, 2015, at Madison, Wisconsin.

The issue for determination is whether petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln, Nebraska.
2. In 2014, petitioner filed an appeal of two overpayments assessed by the respondent. Following a Fair Hearing held on July 10, 2014, and subsequent Decision, the respondent modified overpayment claim (no. [REDACTED]) established against the respondent. On March 13, 2015, respondent notified the petitioner that the modified claim and the second outstanding claim (no.

██████████), which was not modified, were the subject of tax intercept actions. The Notice of State Tax Intercept included petitioner's appeal rights. (Exhibit 2C)

3. On February 25, 2015, the agency sent the Petitioner Notifications of FoodShare Overissuance, Claim Numbers ██████████ and ██████████, respectively, indicating his household was overissued FoodShare benefits. The notices included petitioner's appeal rights. (Exhibit 2F)
4. The agency sent Petitioner a repayment agreement on March 3, 2015. (Exhibit 2I)
5. As to overpayment claim nos. ██████████ and ██████████, the agency sent the Petitioner dunning notices (reminders about the debts) on September 3, 2014, October 2, 2014 and November 4, 2014. (Exhibit 2I)
6. As to overpayment claim nos. ██████████ and ██████████, the agency sent the Petitioner dunning notices on April 2, 2015, May 4, 2015, and June 2, 2015. (Exhibit 2I)
7. On June 12, 2015, the agency sent the Petitioner a Notice of State Tax Intercept regarding overpayment claim numbers ██████████ and ██████████, advising him that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit 2H)
8. Petitioner filed a request for Fair Hearing on September 23, 2015. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal with regard to overpayment claim nos. ██████████ and ██████████ because he does not think he should be held liable for the overpayment underlying the tax intercept. He asserts that he and his wife were not living together during all of the time periods alleged by the respondent.

With regard to the underlying overpayment, the Petitioner's appeal is untimely. The Federal Regulations state the following with regard to appeal deadlines:

A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

7 CFR 273.15(g).

Petitioner's September 23, 2015, appeal was filed well beyond 90-days from the date of the February 25, 2015, overpayment notice regarding overpayment claim nos. ██████████ and ██████████. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this

case, the date of the tax intercept notice was June 12, 2015. As such, Petitioner needed to file his appeal by July 12, 2015. Petitioner did not file his appeal until September 23, 2015. As such, his appeal is untimely and I therefore lack jurisdiction to hear the merits of his appeal of the state tax intercept.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner's appeal of the State Tax Intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of November, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 3, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit